



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 27 2016

CERTIFIED MAIL
Return Receipt Requested

Mr. Richard Riazzi, President and COO
Duquesne Light Company
411 Seventh Avenue (16-1)
Pittsburgh, PA 15219

RE: Section 308 Request for Information

Dear Mr. Riazzi:

The Environmental Protection Agency ("EPA") sent an information request to Duquesne Light Company ("Duquesne") dated April 8, 2016 (the "Information Request"), which requested, among other things, information concerning compliance with the Clean Water Act ("CWA") at certain Duquesne owned or operated facilities. The information was requested pursuant to section 308 of the CWA, 33 U.S.C. § 1318, in order to assist EPA in determining the existence of violations of federal environmental laws. The Information Request required a response within 30 days of receipt. Duquesne provided a partial response, received by EPA on June 6, 2016 ("Partial Response"). Duquesne did not fully comply with significant portions of the Information Request and justified its lack of response with incorrect interpretations of EPA's information gathering authority under the CWA.

By this letter, EPA requests that Duquesne acknowledge it intends to provide full and complete responses to the Information Request within fourteen (14) days of receipt of this letter. Such acknowledgement should indicate that Duquesne will take the steps necessary to comply with Paragraphs 32-35 of the Information Request concerning WET testing.

Duquesne's Failure to Fully Respond to the Information Request

Duquesne claims that EPA's request for WET testing exceeds its authority under Section 308 of the CWA, but provides no legal support for its contention. Duquesne makes the claim that WET testing request "clearly exceeds what is reasonably within the scope" of EPA Section 308 authority "in the context of the NPDES permitting process." This interpretation of EPA's Section 308 Information Request gathering authority is wrong and unsupportable. Given Duquesne's failure to comply with the Information Request and its assertions that it has no obligation to perform required testing and provide responsive information, EPA must consider all available enforcement options to obtain full compliance with the Information Request.



However, EPA would like to avoid that situation, and urges you to consider the strong legal precedent that supports EPA's information gathering authority. Courts have consistently held that the United States is entitled to enforcement of information requests, provided the agency makes a threshold showing that the request is reasonable and for a proper purpose authorized by Congress. *See, e.g., United States v. Tivian Laboratories*, 589 F. 2d 49 (1st Cir. 1978), *cert. denied*, 442 U.S. 942, (1979); *EEOC v. Maryland Cup Corp.*, 785 F.2d 471 (4th Cir. 1986), *cert. denied*, 479 U.S. 815 (1986); *Sierra Club v. Simkins Industries, Inc.*, 847 F. 2d 1109 (4th Cir. 1988) *cert. denied* 491 U.S. 904 (1989); *Mobil Oil Corp. v. EPA*, 716 F. 2d 1187 (7th Cir. 1983); *United States v. Hartz Construction Co.*, 2000 WL 1220919 (N.D. Ill., 2000). EPA may exercise its authority under section 308 of the Clean Water Act to make any reasonable request for information and to set any reasonable deadline for submission. *Hartz Construction*, 2000 WL 1220919 at p. 4. The fact that it may take a significant effort to supply data in response to an information request does not relieve a company of its obligation to fully comply. *See Tivian Laboratories*, 589 F. 2d at 55. The Information Request is reasonable, asks for information that is needed by EPA to properly perform its duties under the CWA and must be complied with. In short, there is no basis for Duquesne's refusal to fully comply with the Information Request.

Notwithstanding the availability of administrative and judicial enforcement, EPA would prefer to resolve any disputes informally. Accordingly, EPA is willing to provide an additional fourteen (14) days for Duquesne to provide confirmation that it will take the steps necessary to perform the WET testing portions of the Information Request, and come into full compliance with the Information Request. If Duquesne has suggestions on how to better fulfill the WET testing requirement in the Information Request, EPA is willing to listen to alternative proposals. But any such alternative proposal must be presented to EPA within fourteen (14) days of your receipt of this letter. Ultimately, EPA expects full compliance, which includes providing all the requested documents and information that was withheld in the Partial Response. Please note that this letter does not provide an extension of the previously stated deadlines. Rather, it is intended to provide you with a final opportunity to come into compliance with the Information Requests prior to initiation of appropriate enforcement efforts. Please let me know as soon as possible after receipt of this letter whether Duquesne intends to come into compliance.

If you have any questions regarding this letter, Duquesne's obligations to comply with the Information Request or require further clarification of the requirements of the Information Request, please contact me at 215-814-5723 or have your attorney contact Douglas Frankenthaler, Assistant Regional Counsel, at 215-814-2471.

Sincerely,



Brian P. Trulear
Chief, NPDES Permits Branch

